

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Telephone Number Portability)

CC Docket No. 95-116

COMMENTS OF BELL ATLANTIC NYNEX MOBILE, INC.

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Bell Atlantic NYNEX Mobile, Inc. (BANM),¹ by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its initial comments on the July 13, 1995, Notice of Proposed Rulemaking (NPRM) in this proceeding.

While the NPRM focuses on whether the Commission should adopt rules governing the portability of numbers issued by wireline local exchange carriers, it also seeks comments on wireless number portability. BANM recommends that the Commission not develop regulations for wireless portability in this proceeding. The absence of current demand for wireless portability, and the unique technical problems that it would entail, counsel against imposing regulations at this time. The preferable course is to convene an advisory committee, which can consider the technical issues and seek to resolve them. Should the Commission then determine that the costs of wireless number portability are warranted by specific benefits, it can propose specific rules.

¹Bell Atlantic NYNEX Mobile, Inc. is the managing general partner of Cellco Partnership, which owns or controls cellular radiotelephone licenses in numerous markets throughout the United States.

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No Clear Need for Wireless Portability Rules. The Commission has determined that it will only impose new regulations on providers of commercial mobile radio services (CMRS) where there is a "clear cut need" for doing so.² In numerous proceedings to regulate CMRS pursuant to Section 332(c) of the Communications Act, the Commission correctly noted that Congress's intent in enacting that provision was to encourage the development of CMRS through promoting competition rather than through "heavy-handed" regulation.³

This fundamental policy of imposing regulation only where there is a clear factual basis for doing so is equally applicable here. The CMRS industry is, as the Commission has recognized, marked by a growing number of competitors and service offerings to subscribers. The considerations that have led the Commission to consider wireline number portability (such as encouraging the development of competition to wireline local exchange carriers) do not exist with regard to CMRS. Customers already have multiple competitive carriers from which to purchase wireless services. In addition, there is no demonstrable demand for portability. By far most wireless traffic originates with the subscriber, who discloses his or her

²Petition of the Connecticut Dep't of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers, Report and Order, PR Docket No. 94-106, at 10, 13 (1995).

³Id.; Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd. 1411, 1418 (1994) ("We establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees"); Third Report and Order, 9 FCC Rcd. 7988, 8002 (1994) (Commission's objective is to establish a regulatory regime which "will ensure that the marketplace -- not the regulatory arena -- shapes the development and delivery of mobile services.").

number only to selected callers. The business "value" of a wireless phone number is thus far less than that of a wireline number. Cellular telephone numbers are, as the Commission notes, already completely "portable" in the sense that they can be taken anywhere in the nation and used to make or receive calls. The ease of use of wireless phones, their ability to move with the subscriber, and the availability of a subscriber's unique number wherever he or she travels, factors that are unique to CMRS, also suggest the lack of any "clear cut need" for wireless number portability.

Imposing wireless number portability obligations at this time would also be inadvisable. The Commission already has before it multiple uncompleted rulemakings concerning the CMRS industry on such matters as interconnection, roaming, and resale of CMRS services.⁴ The choices the Commission makes in those proceedings may directly affect consideration of the need for taking any action regarding number portability. For example, existing number portability technology generally does not permit nationwide roaming. For this reason, wireless portability policies, and precisely what those policies should be, should not be considered in a vacuum, without the Commission first resolving the previously-initiated CMRS proceedings. The proper course is to complete the other rulemakings, and then, if appropriate, consider the need for additional

⁴E.g., Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking, CC Docket No. 94-54, 9 FCC Rcd. 5408 (1994); Second Notice of Proposed Rulemaking, 10 FCC Rcd. ____ (1995).

policies on wireless number portability.

Technical Problems With Wireless Portability. Imposing portability obligations at this time would also raise difficult and unique problems for wireless communications. Taking number portability rules developed for the wireline industry and extending them to wireless would be inappropriate because of the technical differences in the manner in which wireless numbers are used to route calls. For example, wireless roaming services currently rely on transmission of a subscriber's NPA/NXX code information, which identifies the subscriber's "home" carrier. Service provider portability would require carriers to expand significantly their data base capacity to provide additional information about each subscriber and his or her current service provider, in order to be able to validate the subscriber's service agreement. Enabling systems to provide that validation would impose significant new costs on CMRS providers, a particular burden for small carriers. Portability could also interfere with the wireless industry's efforts to prevent fraudulent use of numbers by impairing the ability of a carrier to identify immediately the validity of a customer's number. It is essential for the Commission, in developing policies for number portability, to keep in mind the numerous and significant differences between wireline and wireless communications which make portability in the wireless industry more difficult to implement.

These technical problems can best be addressed by industry and other interested parties in the first instance. In other contexts the Commission has

relied on advisory committees to address such issues.⁵ Once solutions to the current technical problems are identified, the Commission can then consider whether the costs of requiring the industry to implement those solutions is justified by whatever benefits of wireless portability are found to exist.

Need for Nationwide Portability Policy. The NPRM (at 12-13) sets forth the Commission's tentative view that there is a strong federal interest in establishing uniform, national policies for number portability. BANM agrees. The need for a predominant federal role is particularly compelling with regard to CMRS. The wireless industry operates without regard to geographic boundaries, offering its customers the advantages of seamless service which is available in most areas of the nation. Were states to adopt individualized CMRS number portability policies, CMRS carriers' ability to offer service would be impaired, and those carriers operating in multiple states would be forced to develop different, even conflicting, programs and technical responses to different state-imposed obligations. It was precisely to avoid a patchwork of differing state requirements that Congress vested in the Commission primary authority to regulate CMRS.⁶ BANM thus recommends that the Commission preempt the states from imposing number portability obligations on CMRS carriers.

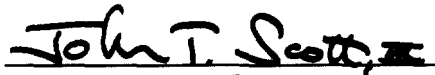
⁵E.g., Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, FCC 95-283 (July 13, 1995).

⁶The state preemption provision in Section 332(c) is intended "to foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure." House Report No. 103-111, 93d Cong., 1st Sess. (1993) at 587.

In sum, BANM urges the Commission to defer considering the adoption of regulations creating new obligations on wireless carriers in this area until the numerous technical issues involved with portability can be resolved, and until the Commission has developed a record that establishes a clear need for such rules. To ensure uniformity and the preeminence of federal policy in this area, the Commission should also preclude the states from adopting separate wireless number portability requirements.

Respectfully submitted,

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Dated: September 12, 1995